

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

**MISSISSIPPI PUBLIC SERVICE COMMISSION**

**2019-UA-116**

**IN RE:        PETITION OF MISSISSIPPI POWER COMPANY FOR A CERTIFICATE  
              OF PUBLIC CONVENIENCE AND NECESSITY FOR  
              ENVIRONMENTAL COMPLIANCE ACTIVITIES AUTHORIZING THE  
              CLOSURE OF THE ASH POND, CONSTRUCTION OF LOW VOLUME  
              WASTEWATER TREATMENT FACILITIES, AND CONVERSION OF  
              BOTTOM ASH COLLECTION FACILITIES FOR THE PLANT VICTOR  
              J. DANIEL ELECTRIC GENERATING FACILITY IN JACKSON  
              COUNTY MISSISSIPPI**

**SIERRA CLUB'S RESPONSE TO MISSISSIPPI POWER COMPANY'S MOTION TO  
STRIKE TESTIMONY OF RACHEL WILSON**

Mississippi Power Company does not dispute the validity of the data or concerns Rachel Wilson addresses in her testimony. The company's Motion to Strike is basically telling the Commission it should refuse, on the basis of a non-existent procedural violation, to consider the factual information necessary to make a decision protective of ratepayers.

The motion should be denied, for the following reasons:

- (1) The testimony was submitted in compliance with the Commission's rules, as confirmed by counsel's correspondence with the Commission's staff.
- (2) Mississippi Power supplemented its discovery responses with the company's economic analysis which forms a key basis of the testimony on September 20 and October 2, 2019.
- (3) Mississippi Power had and has full access to the information on which Ms. Wilson relies.

(4) Mississippi Power's claim that the Sierra Club is acting strategically to delay this proceeding ignores the clear data, and also ignores the fact that it was MPC that waited four years to submit this application to the Commission.

1. The Commission's rules and scheduling order place no limits on the time for submission of testimony, and the Sierra Club confirmed this with the Commission's staff.

This certificate application presented an unusual situation to begin with: the application itself did not contain the information necessary to make an informed decision on the public convenience and necessity, and the company demanded an immediate response. As the Commission is aware, the Sierra Club has filed a motion, scheduled for hearing on October 24, to require a supplemented petition based on this lack of information.

Given the lack of a scheduling order in this matter, counsel for the Sierra Club inquired with the Commission staff on September 11, 2019 whether there was any deadline for submission of testimony, given that the Commission's rules are silent on the issue. The response was that there is no deadline, but as a practical matter it should be submitted as soon as possible. See Exhibit 1.

The Commission's September 13, 2011 scheduling order does not address submission of testimony. MPC evidently asserts that by its silence the order barred any additional evidence in the docket, regardless of its relevance to the public convenience and necessity, or the potential to save the ratepayer tens of millions of dollars. Any such interpretation of the order would be an abdication of the Commission's duty to protect the ratepayer, and the Sierra Club does not believe the Commission would knowingly abdicate that duty. The Sierra Club also does not believe that the Commission intended its order to arbitrarily exclude clearly relevant evidence.

Mississippi Power does not cite any Commission decision or other precedent for excluding Sierra Club's testimony. The Company's argument is in fact inconsistent with the Commission's rules, which plainly contemplate the admission of all relevant testimony. When the Commission sets a hearing on an abbreviated schedule as it has in this matter, the rules "provide[] that all parties are afforded an opportunity to submit in writing, argument, evidence and testimony in contravention to the proposed stipulated facts or procedure . . . ." RP 101.3. Commission Rule 103.8 of Chapter 15 provides for the exclusion of "late filed evidence," but this is clearly defined as evidence submitted "after the close of the testimony." Ms. Wilson's testimony is not late filed. Even if Sierra Club's testimony was untimely, the Commission has broad discretion to allow any testimony "as it deems in the public interest," RP 103, or when the other parties have a "reasonable opportunity" to review the evidence and examine the sponsoring witness. RP 103.7.b.

Here, MPC has ample opportunity to review Sierra Club's brief testimony and the attached exhibits, most of which belong to MPC itself, and examine Ms. Wilson at the public hearing. Any order precluding Sierra Club from offering testimony to rebut Mississippi Power's proposed order would be an arbitrary departure from the Commission's own rules.

2. MPC has access to all of the data referenced in Ms. Wilson's testimony. In fact, most of it came from MPC.

Mississippi Power states that it requires discovery to address Ms. Wilson's testimony, but the company does not identify the discovery it requires. As Ms. Wilson's testimony states, it is based on (1) MPC's application and testimony, (2) discovery responses and attachments provided by the company, and (3) industry publications and publicly available data. Direct

Testimony of Rachel Wilson, p. 2. The industry publications and publicly available data are specifically referenced in the text and footnotes to the testimony.

In short, MPC either supplied or has access to all the data on which Ms. Wilson's testimony is based.

3. The Sierra Club's testimony is based on data, not strategy.

Mississippi Power is in the habit of accusing the Sierra Club of bad behavior and delay tactics, as its earlier response to the Sierra Club's motion for a supplemental filing demonstrates. These attacks do not address the fact that this certificate application does not have the necessary factual support.

As we have noted, Mississippi Power contends that it must immediately start retrofitting Plant Daniel to comply with a coal ash rule EPA issued in 2015. MPC waited nearly five years—until July 2019—to file the application in this case. MPC now says that the Sierra Club waited “weeks” too long to file its testimony. MPC's view is thus that the Commission should not consider the data – including MPC's own data – showing that a substantial part of the expenditures here are unnecessary if the plant shuts down. According to MPC the Commission should also ignore that the ratepayer saves money in the short run and over the long haul if MPC retires the plant and qualifies for an extended CCR closure period.

Further, a substantial part of Ms. Wilson's testimony is based on MPC's economic analysis provided in supplemental discovery responses, which were first provided on September 20 and October 2, 2019. Likewise, it was not until late September that MPC revealed that the transmission constraints it cited as a reason to keep an uneconomic plant running could be completed in a time frame that would allow a different and less expensive closure option for the Daniel coal ash pond. MPC waited until a month before the hearing to provide this dispositive

information, but now says that testimony based on that information is too late because it should have been filed “weeks” earlier.

The Sierra Club also recognizes that MPC, and perhaps the Commission, take the view that any discussion of retirement of Plant Daniel should take place in the Reserve Margin Planning Docket. This does not take into account that Mississippi Power will no doubt expect the ratepayer to foot the bill for the \$45 million the company proposes to spend on the bottom ash handling facility and the wastewater treatment facility. The public convenience and necessity requires consideration in this docket of whether these costs can be avoided.

At bottom MPC is asking the Commission to strike testimony that is factual, valid and timely submitted under the Commission’s rules. This is the very information that must be considered to determine the public convenience and necessity and protect the ratepayer. If the Sierra Club is wrong on the facts Mississippi Power has all of the data, staff and ratepayer funded counsel necessary to make that case.

The motion should be denied.

Respectfully submitted this 21<sup>st</sup> day of October, 2019.

Respectfully submitted,  
Mississippi Chapter Sierra Club



By: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I, Robert B. Wiygul, counsel for Sierra Club do hereby certify that in compliance with RP6.122(2) of the Commission's Public Utilities Rules of Practice and Procedure (the "Rules").

(1) An original and twelve (12) true and correct copies of the filing have been filed with the Commission by United States Postal Service this date to:

Katherine Collier, Executive Secretary  
Mississippi Public Service Commission  
501 N. West Street, Suite 201-A  
Jackson, MS 39201

(2) An electronic copy of the filing has been filed with the Commission via e-mail to the following address: [efile.psc@psc.state.ms.us](mailto:efile.psc@psc.state.ms.us)

(3) An electronic copy of the filing has been served via e-mail to the following address:

See attached Exhibit A

This the 21<sup>st</sup> day of October, 2019.



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